

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3158 of 2020

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1. Ambika Paswan Son of Bansi Ram Resident of Village-Jamalpur, P.S.-Parasia, District-Gaya.
 2. Dhananjay Kumar Son of Late Ananadi Singh Resident of Village-Ankuripar, P.S.-Khodaganj, District-Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Chief Engineer (Mechanical), Public Health Engineering Department, Bihar, Patna.
4. The Engineer-in-Chief, Public Health Engineering Department, Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Department, Patna Circle, Patna.
6. The Executive Engineer, Public Health Division, Hilsa, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rakesh Kumar, Adv.
For the Respondent/s : Mr. Bijoy Kr. Sinha, AC to AAG5

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

5 15-02-2024 Heard learned counsel for the petitioners and learned counsel for the State.

2. The present writ petition has been filed for regularization of the services of petitioner No.1 and father of petitioner No.2 in a regular establishment as has given to similarly situated persons in view of regularly working on work charge establishment for more than 28 years having more than 35 sanctioned and vacant posts available in Hilsa Division.



3. Counsel for the petitioners submits that petitioner No.1 was initially appointed as Keyman -cum- Chaukidar in Public Health Department, Sub-Division, Hilsa (Nalanda) under Hilsa Division in the month of April, 1983 on payment of daily wage basis whereas father of petitioner No.2 was also appointed as Keyman -cum- Chaukidar in Public Health Department, Sub-Division, Ekangarsarai (Nalanda) under Hilsa Division in the month of April, 1983 on daily wage payment basis.

4. Counsel submits that on the basis of performance, both petitioner No.1 and father of petitioner No.2 were appointed as muster roll in the year 1987, and since then, they were working in the department of muster roll. It has been submitted that both were appointed on work charge establishment in the pay scale vide letter dated 10.01.1992 with effect from 01.08.1991. It has been further submitted that Superintending Engineer, PHED, Patna Circle has accepted their joining on the respective post in work charge establishment on 12.01.1992 against the sanctioned vacant posts. All of a sudden, vide letter dated 31.03.1999, they were terminated from the service on the ground that they were appointees after 01.01.1988.



5. Counsel further submits that petitioners and five other similarly situated persons have challenged their termination in C.W.J.C. No. 3670 of 1999. The said case was allowed on 13.08.2004 in favour of the petitioners, thereafter, the State of Bihar preferred L.P.A. No. 685 of 2005 which was dismissed on 22.07.2005. Against the said order passed in L.P.A., the State has preferred S.L.P. (Civil) No.7169 of 2007 which was again dismissed on 10.12.2013. After dismissal, petitioners and others five were not reinstated on their substantive posts then petitioners and others filed contempt petition vide MJC No. 2767 of 2005 for initiation of contempt, and only thereafter, petitioner No.1 and father of petitioner No.2 were allowed to join office of Sub-Divisional Officer, Public Health Sub-Division, Hilsa vide order No. 157 dated 31.12.2005 in the office of Sub-Divisional Officer, Public Health Sub-Division, Hilsa, they were not allowed to join on substantive post, but compelled them to join on muster roll.

6. Counsel further submits that petitioners and others five persons were subsequently permitted to continue work as work charge establishment w.e.f. 10.01.1992 vide office order No.111 dated 14.07.2017. Counsel submits that petitioners have started working since April, 1983, and thereafter, they have been



appointed on muster roll in the year 1987 and after litigating from Hon'ble High Court to Hon'ble Supreme Court, their joining continued on work charge establishment w.e.f. 10.01.1992 onwards.

7. Counsel further submits that there were 40 sanctioned posts vacant in the establishment of Public Health Division, Hilsa since long and no appointment has been made till now. Petitioners had continuously been requested to the respondents for regularization of their services as there are several sanctioned vacant posts lying since long. In result, they are not getting benefit of Government scheme of time bond promotion, A.C.P. etc., whereas petitioners have already regularized and given A.C.P.. Counsel submits that father of petitioner No.2 died in harness dated 31.10.2019 who has to retire on 31.05.2024, and therefore, he is entitled for all consequential benefits of regularization from the date of his entitlement whereas petitioner No.1 is still working and due to attitude of the respondents, petitioners had filed writ petition before this Court for regularization.

8. Counsel for the State submits that he has filed counter-affidavit in which the State has taken categorical stand that after order passed by the Hon'ble Supreme Court in which



the order passed by the writ court has been upheld. The petitioner No.1 and father of petitioner No.2 were treated to be in the continuous service of work charge establishment w.e.f. 10.01.1992. In this regard, Office of respondent has issued a letter vide order No.111 dated 14.07.2017.

9. Counsel for the State further submits that bunch of cases were filed for regularization of service and matter travelled upto Hon'ble Supreme Court, but in the light of order dated 13.07.2006 passed in C.W.J.C. No.7359 of 2002, the three men committee have been constituted to consider the case of employees and other similarly situated persons for the purpose of their regularization in the light of judgment of Hon'ble Apex Court in the case of **the Secretary, State of Karnataka Vs. Uma Devi** and the State Government has taken policy decision to regularize the services of daily wager/ retrenched daily wager employees vide resolution No.639 dated 16.03.2006 issued by the Department of Personnel and Administrative Reforms, Government of Bihar. He submits that in the light of the said policy decision taken by the Government, Hilsa, PH Division has been allotted 27 Group-D Technical posts. The three men committee of the department accordingly prepared the seniority list of the employee of the PH Division, Hilsa. The seniority list



was prepared according to date of birth, roaster clearance and after following the reservation policy. It has been submitted that on the recommendation of the three men committee, the services of 27 daily wager employees have been absorbed in regular establishment.

10. Counsel further submits that petitioner No.1 and father of petitioner No.2 have also been considered for regularization of their services, but their services could not be regularized only due to the reason that they were below in the seniority list. Counsel submits that in the light of order dated 30.07.2007 passed in **MJC No.1030 of 2006 (Sushil Kumar Pandey Vs. The State of Bihar and Ors.)**, a fresh seniority division wise list has been prepared and in this seniority list, the name of petitioner No.1 was figured at Serial No.33 who belongs to schedule caste category and the name of father of petitioner No.2 was figured at Serial No.43 who belongs to backward class category.

11. Counsel further submits that according to the recommendation list by three men committee, services of schedule caste category employees who were upto Serial No.32 of the seniority list have been regularized and the services of backward class category employees who were upto Serial



No.23, seniority list have been regularized.

12. Counsel further submits that petitioners are demanding parity as other similarly situated persons, namely, Siya Das, Bhadarchand Paswan and Veeranjana Paswan were regularized. It has been submitted that those persons were senior to the petitioners as Siya Das was figured at SI. No.31, the name of Bhadarchand Paswan was figured at SI. No. 32 and the name of Veeranjana Paswan was figured at SI. No.24 of the seniority list.

13. Counsel further submits that at present petitioner No.1 who has been reinstated in the work charge establishment w.e.f. 10.01.1992, has already crossed the age of retirement whereas father of petitioner No.2 has already died on 31.10.2019.

14. In the light of the submissions made by the parties, it transpires to this Court that the case of petitioners were considered for regularization and their names were listed in the seniority list, but only due to the reason that their ranks were below in the seniority list, therefore, their case could not be considered for regularization.

15. So far as the status as on day is concerned, petitioner No.1 is entitled for his retiral dues whatsoever it may



be and similarly, petitioner No.2 who has filed this case on behalf of his father, is also entitled for only retiral dues for which they are entitled, if any. In this background, this Court disposed off this writ petition, directing the State authorities to make payment to petitioner No.1 and petitioner No.2, (if there is no other legal heirs) within 3 months for all their retiral dues, if any, from the date of production of the order before the Executive Engineer, Public Health Division, Hilsa, Nalanda.

16. With the aforesaid direction, the present writ application is hereby disposed off.

(Dr. Anshuman, J.)

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